

E-Filed 1/19/11

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

RAYMOND E. JONES,
Petitioner,

v.

MATTHEW CATE,
Respondent.

No. C 10-0302 RS (PR)

**ORDER DENYING REQUEST FOR A
CERTIFICATE OF APPEALABILITY;**

**DENYING APPLICATION TO
PROCEED IN FORMA PAUPERIS ON
APPEAL**

This closed federal habeas corpus action, which is currently on appeal, was filed pursuant to 28 U.S.C. § 2254 by a *pro se* state prisoner. The Court denied the petition, entered judgment in favor of respondent, and declined to issue a certificate of appealability on December 21, 2010.

Petitioner now requests the issuance of a certificate of appealability (“COA”), and applies to *proceed in forma pauperis* (“IFP”) on appeal. (See Docket No. 18.) The request for a COA is DENIED as moot because the Court declined to issue a COA in the order of dismissal. The application to proceed IFP on appeal is DENIED on grounds that the appeal is not taken in good faith. An appeal may not be taken IFP if the trial court certifies it is not

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1 taken in good faith. Fed. R. App. P. (“FRAP”) 24(a)(3)(A). “Not taken in good faith” means
2 “frivolous.” *Ellis v. United States*, 356 U.S. 674, 674–75 (1958); *Hooker v. American*
3 *Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002). This Court certifies that any appeal taken
4 from the order of dismissal and judgment of this action will not be taken in good faith and is
5 therefore frivolous because there are no valid grounds on which to base an appeal.
6 Accordingly, petitioner’s IFP status is hereby REVOKED.

7 The Clerk shall forthwith notify plaintiff and the Court of Appeals of this order. *See*
8 FRAP 24(a)(4). Plaintiff may file a motion for leave to proceed IFP on appeal in the Court
9 of Appeals within thirty days after service of notice of this order. *See* FRAP 24(a)(5). Any
10 such motion “must include a copy of the affidavit filed in the district court and the district
11 court’s statement of reasons for its action.” *Id.*

12 **IT IS SO ORDERED.**

13 DATED: January 14, 2011


14 RICHARD SEEBORG
United States District Judge